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14 *Attorneys for Plaintiff Donald Sherman*

15 **UNITED STATES DISTRICT COURT**

16 **DISTRICT OF NEVADA**

17 DONALD SHERMAN,

18 Plaintiff,

19 v.

20 HAROLD WICKHAM, in his personal
capacity; KIM THOMAS, in his personal
capacity; WILLIAM GITTERE, in his
personal capacity and in his official capacity as
21 Deputy Director of Operations of the Nevada
Department of Corrections; BRIAN
22 WILLIAMS, in his official capacity as Deputy
Director of Programs of the Nevada
Department of Corrections; WILLIAM
23 REUBART, in his personal capacity and in his
official capacity as Warden of Ely State Prison;
24 DAVID DRUMMOND, in his official capacity
as Associate Warden of Ely State Prison; and
25 TASHEENA COOKE, in her official capacity
as Associate Warden of Ely State Prison,
26
27 Defendants.

28 Case No. 3:21-cv-00168-ART-CSD

**JOINT STIPULATION TO STAY
SCHEDULING ORDER AND
DISCOVERY PLAN (DKT. NO. 29)**

(First Request)

Hon. Anne R. Traum
Hon. Craig S. Denney

1 **JOINT STIPULATION TO STAY SCHEDULING ORDER AND DISCOVERY PLAN**

2 Pursuant to LR IA 6-1 and LR 26-3, counsel for Plaintiff Donald Sherman and counsel
 3 for Defendants Harold Wickham, Kim Thomas, William Gittere, Brian Williams, William
 4 Reubart, David Drummond, and Tasheena Cooke respectfully submit this joint stipulation to stay
 5 the current case management deadlines in the Court's April 4, 2022 Scheduling Order and
 6 Discovery Plan Re: Pro Se § 1983 Actions, *see* Dkt. No. 29 (the "Order"), pending the parties'
 7 Rule 26(f) conference and submission of a revised stipulated discovery plan and case
 8 management order pursuant to this Court's Local Rules.

9 The current scheduling Order sets a fact discovery deadline of October 1, 2022.

10 *See* Order at 6. This Stipulation is not being submitted within 21 days of the deadline to
 11 complete fact discovery because counsel for Defendants received orders to participate in active
 12 military service from August 25, 2022 until September 19, 2022, and was unable to meet and
 13 confer regarding a potential stipulation to stay or amend the Order until September 21. This is
 14 the first stipulation to stay the Order and extend discovery deadlines.

15 The Stipulation is being filed, and a stay of the current case management deadlines is
 16 being requested, to permit the parties to further confer about a workable case management
 17 schedule to govern Plaintiff's First Amended Complaint. Plaintiff filed a First Amended
 18 Complaint on July 18, 2022, which added five new defendants—Gittere, Williams, Reubart,
 19 Drummond, and Cooke—in addition to Defendants Wickham and Thomas, who were named in
 20 Plaintiff's original Complaint. *See* Dkt. No. 57. The newly added Defendants returned waivers
 21 of service of the summons on September 23, 2022, and currently must respond to the First
 22 Amended Complaint by October 18, 2022. *See* Dkt. Nos. 65–69. Because the newly added
 23 Defendants have not appeared in this action, Plaintiff will not be able to complete discovery by
 24 the deadlines set in the Order. In the interest of assisting the Court in creating an acceptable case
 25 management schedule, counsel for the parties wish to confer about revised case management
 26 dates and submit such proposed dates to the Court for its approval.

1 Counsel for the parties have met and conferred regarding this Stipulation and proposed
 2 stay, and no party objects to the requested stay. This Stipulation is being made in good faith and
 3 not for the purpose of delay.

4 **DISCOVERY COMPLETED TO DATE**

5 Plaintiff and Defendants Harold Wickham and Kim Thomas, who were named in the
 6 original Complaint, have exchanged their mandatory initial disclosures as required by the Order.
 7 *Se Dkt. No. 29 at 2.* Plaintiff propounded written discovery on Defendant Harold Wickham.
 8 Defendant Wickham timely responded to the written discovery. Plaintiff has not yet propounded
 9 written discovery on any of the newly added Defendants, who have not yet appeared in this case.
 10 To date, the parties have not scheduled any depositions or engaged in expert discovery.

11 **DISCOVERY YET TO BE COMPLETED**

12 Plaintiff is prepared to propound written discovery on the newly added Defendants once
 13 they have appeared in this case and discovery is otherwise permitted under the Federal Rules of
 14 Civil Procedure and this Court's Local Rules. After written discovery has been propounded and
 15 responded to, Plaintiff intends to notice depositions consistent with the Federal Rules of Civil
 16 Procedure and the Local Rules. Similarly, Defendants intend to serve written discovery and
 17 notice a deposition of the Plaintiff according to applicable rules. The parties will meet and
 18 confer regarding expert discovery and will submit an appropriate stipulation, consistent with the
 19 Local Rules, for the Court's consideration if expert discovery is anticipated.

20 **REASONS FOR REQUESTED STAY**

21 This Stipulation is being filed because Plaintiff added additional defendants in the First
 22 Amended Complaint, which was filed July 18, 2022. *See Dkt. No. 57.* The newly added
 23 Defendants returned waivers of service of the summons on September 23, 2022, and currently
 24 must respond to the First Amended Complaint by October 18, 2022. *See Dkt. Nos. 65–69; see*
 25 *also Fed. R. Civ. Proc. 4(d)(3).* Because the newly added Defendants have not yet appeared in
 26 this action, and Plaintiff may not propound discovery on the new defendants until after a
 27 Rule 26(f) conference is held, *see Fed. R. Civ. Proc. 26(d)(1),* the parties agree that the Order's
 28 October 1, 2022 deadline to complete discovery will not provide sufficient time for the parties to

1 complete discovery. Once the newly added Defendants appear in this action, the parties will
 2 complete a Rule 26(f) conference and submit a proposed discovery plan and scheduling order
 3 within the time periods set by this Court. *See* LR 26-1(a).

4 **PROPOSED TIMELINE**

5 The current deadline for discovery is October 1, 2022. *See* Order at 6. Through this
 6 Stipulation, the parties hereby respectfully request that the Court enter an order staying the
 7 currently imposed case management deadlines set in the Order until such time as the parties are
 8 able to complete a Rule 26(f) conference and submit a stipulated discovery plan and scheduling
 9 order following the newly added Defendants' appearance in this action as required by the Local
 10 Rules, *see* LR 26-1(a), and this Court enters a new scheduling order. The parties anticipate they
 11 will be filing a joint motion for a revised scheduling order not later than November 15, 2022.
 12 This is based on the assumption that the newly added defendants will file a timely answer on or
 13 before October 18, 2022, that the parties will meet and confer pursuant to Rule 26 shortly
 14 thereafter and that agreed upon revised case management dates will be submitted to the Court,
 15 via Joint Motion shortly thereafter.

16 Therefore, **IT IS HEREBY STIPULATED AND AGREED** between the parties,
 17 through their counsel, and subject to the Court's approval, that the Court's April 4, 2022
 18 Scheduling Order and Discovery Plan Re: Pro Se § 1983 Actions, *see* Dkt. No. 29, is stayed until
 19 the parties complete a Rule 26(f) conference and submit joint motion to revise the current case
 20 management deadlines following the appearance of the Defendants added to the First Amended
 21 Complaint as required by the Local Rules, *see* LR 26-1(a), and this Court enters a new
 22 scheduling order.

1 Respectfully submitted,

2 Dated: September 27, 2022

3 O'MELVENY & MYERS LLP

4
5 By: /s/ Meaghan VerGow
6 Meaghan VerGow
7 *Attorneys for Plaintiff Donald Sherman*

8 Dated: September 27, 2022

9
10 LAW OFFICES OF KRISTINA
11 WILDEVELD & ASSOCIATES

12
13 By: /s/ Lisa A. Rasmussen
14 Lisa A. Rasmussen
15 *Attorney for Plaintiff Donald Sherman*

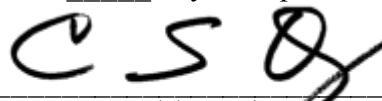
16 Dated: September 27, 2022

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18 OFFICE OF THE NEVADA ATTORNEY
19 GENERAL

20
21 By: /s/ Austin T. Barnum
22 Austin T. Barnum
23 *Attorney for Defendants Harold Wickham and*
24 *Kim Thomas*

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28 **IT IS SO ORDERED.**

29 Dated this 28th day of September, 2022.

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31 Honorable Craig S. Denney
32 United States Magistrate Judge